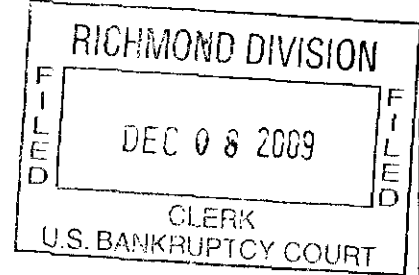


ORIGINAL

UNITED STATES BANKRUPTCY COURT FOR  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division



In re:

CIRCUIT CITY STORES WEST  
COAST, INC.

Chapter 11  
CASE NO. 08-35654-KRH

Debtor.

**CREDITOR JACK HERNANDEZ'S PRELIMINARY RESPONSE TO DEBTORS'**  
**SIXTIETH OMNIBUS OBJECTION TO CLAIMS [DISALLOWANCE OF CERTAIN**  
**(I) NO LIABILITY (LEGAL CLAIMS); (II) NO LIABILITY (MISCELLANEOUS**  
**CLAIMS); AND (III) NO LIABILITY (SUBCONTRACTOR CLAIMS)]**

COMES NOW, Creditor Jack Hernandez, through its undersigned counsel, pursuant to Fed. R. Bankr. P. 3007, Local Bankruptcy Rule 3007-1(D), and this Court's April 1, 2009 Order Establishing Omnibus Objection Procedures and Approving the Form and Manner of Notice of Omnibus Objections [Docket No. 2881], and responds to the Debtors' Sixtieth Objection to Claims [Disallowance of certain (I) No Liability (Legal Claims); (II) No Liability (Miscellaneous Claims); and (III) No Liability (Subcontractor Claims)] [Docket No. 5879] and states as follows:

**Argument**

1. The Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code on November 10, 2008 and continue to manage their affairs as debtors-in-possession.
2. On April 17, 2008, Creditor Hernandez filed his lawsuit on behalf of himself and all other sales managers employed by Debtors seeking overtime compensation,

1 compensation for missed meal and rest breaks, waiting time penalties and attorneys'  
2 fees under California law. The class action-styled case, which is entitled *Hernandez v.*  
3 *Circuit City, Inc.*, is filed in the San Diego Superior Court, Case No. 37-2008-  
4 00082173. Creditor Hernandez filed this case as a class action to represent all  
5 California-based salaried sales managers who were employed by Debtors and who were  
6 not paid overtime compensation, or provided meal and rest breaks. Considerable state  
7 trial court litigation occurred prior to the bankruptcy filing.

8 3. On January 13, 2009, pursuant to this Court's Order regarding creditor claims, Creditor  
9 Hernandez - through its counsel - filed a timely creditor claim on his own behalf and  
10 that of the putative class with the bankruptcy administrator, Kurtzman Carson  
11 Consultants. Plaintiff has not been able to proceed with any discovery or other  
12 litigation on this claim because his counsel has been informed that this is a liquidating  
13 bankruptcy case and there are insufficient funds available to allow the litigation to  
14 proceed on its merits.

15 4. On or about November 20, 2009, Debtors filed their Sixtieth Omnibus Objection to  
16 Claims [Disallowance of certain (I) No Liability (Legal Claims); (II) No Liability  
17 (Miscellaneous Claims); and (III) No Liability (Subcontractor Claims)]. In its  
18 Objection, the Debtors' object to the following claim filed by Creditor Hernandez:

19 Claim No.: 6045 Claim Amount: \$23,940,292.00

20 5. With its Objection, Debtors seek to disallow Creditor Hernandez's claim.

21 6. Creditor Hernandez objects to Debtors' *ipse dixit* attempt to scuttle these claims. These  
22 claims arise out of the lawsuit filed on behalf of plaintiff and the putative class of  
23 workers similar situated to him against the Debtors for their failure to pay him and the  
24 putative class all wages owed under California Labor law.

25 7. Debtors are in exclusive possession of the information necessary for Creditor  
26 Hernandez to value its claim in any more detail. Specifically, Debtors hold the policy  
27 and procedure documents, payroll, employment and time records, including pay rates  
28 and number of weeks worked by Creditor Hernandez and the putative class.

- 1 8. It is important to note that, since Debtors' filing of its voluntary petition, all court  
2 proceedings of Creditor Hernandez have been stayed pursuant to the federal bankruptcy  
3 law "automatic stay" rules. Due to the automatic stay, Creditor's counsel is prohibited  
4 from conducting discovery on any issues (certification, merits or damages) against  
5 Debtors that would be necessary to further evaluate Creditor Hernandez's claim with  
6 more particularity.
- 7 9. Debtors' counsel has informed Creditor's counsel that this will be a "liquidating"  
8 bankruptcy. In addition, Debtors' counsel informed Creditor Hernandez that given  
9 Debtors' limited financial resources, matters that would otherwise be returned to trial  
10 court(s) are being kept in the Bankruptcy Court in order to curb the cost of litigating  
11 claims.
- 12 10. Debtors' Objection, which seeks to disallow the claim of Creditor Hernandez and the  
13 putative class, is improper. Creditor Hernandez is prepared to respond in detail to any  
14 factual or legal grounds that Debtor believes would tend to support disallowance of this  
15 claim, yet without such information he is "shadow boxing" – unable to understand, let  
16 alone respond to, contentions, arguments and conclusions that have to date not been  
17 disclosed. With its Objection, Debtors essentially seek to disallow Creditor  
18 Hernandez's claims for reasons that are completely unknown. The only basis for the  
19 objection is the unremarkable conclusion that Debtors have concluded that they are not  
20 liable for any claims arising from pending, prospective or threatening litigation. This  
21 kind of argument is as unsurprising as it is unhelpful to the Court's ability to make a fair  
22 determination of the claim. This objection is akin to a motion for summary judgment  
23 without allowing plaintiff to conduct any discovery and without Debtors providing even  
24 a shred of evidence to support the outlandish dismissal request. In reality, the series of  
25 objections – now numbering over SIXTY – seems more designed to be a fishing  
26 expedition for "slip ups" where creditors' counsel do not respond rather than a bona fide  
27 attempt at attaining due process justice to the rights of the parties.  
28

1 11. These claims arise under California law. Similar to federal law, wages have always  
2 been afforded special status in California. The California Supreme Court has recently  
3 explained the strong public policy supporting claims of this nature:  
4

5 The public policy in favor of full and prompt payment of an  
6 employee's earned wages is fundamental and well established: 'Delay  
7 of payment or loss of wages results in deprivation of the necessities  
8 of life, suffering inability to meet just obligations to others, and, in  
9 many cases may make the wage-earner a charge upon the public.'  
10 (*Kerr's Catering Service v. Department of Industrial Relations*  
11 (1962) 57 Cal.2d 319, 326) California has long regarded the timely  
12 payment of employee wage claims as indispensable to the public  
13 welfare: "It has long been recognized that wages are not ordinary  
14 debts, that they may be preferred over other claims, and that, because  
15 of the economic position of the average worker and, in particular, his  
16 dependence on wages for the necessities of life for himself and his  
17 family, it is essential to the public welfare that he receive his pay  
18 when it is due. [Citations.] An employer who knows that wages are  
19 due, has ability to pay them, and still refuses to pay them, acts  
20 against good morals and fair dealing, and necessarily intentionally  
21 does an act which prejudices the rights of his employee." (*In re*  
22 *Trombley* (1948) 31 Cal.2d 801, 809-810; see *Gould v. Maryland*  
23 *Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137 [statute  
24 criminalizing prompt payment violations shows "the policy involves  
25 a broad public interest, not merely the interest of the employee"].)  
26

18 *Smith v. Superior Court* (2006) 39 Cal.4th 77, 82.

19 In another case, the California Supreme Court explained:

20 Considerations of sound public policy buttress our conclusion. Labor  
21 Code section 1194 confirms "a clear public policy ... that is  
22 specifically directed at the enforcement of California's minimum wage  
23 and overtime laws for the benefit of workers." (citation omitted) As  
24 defendant's own authority reminds us, California's overtime laws are  
25 remedial and are to be construed so as to promote employee  
26 protection. (citation omitted.) And, as we have recognized, "this state  
27 has a public policy which encourages the use of the class action  
28 device." (citation omitted.) "By establishing a technique whereby the  
claims of many individuals can be resolved at the same time, the class  
suit both eliminates the possibility of repetitious litigation and  
provides small claimants with a method of obtaining redress for  
claims which would otherwise be too small to warrant individual  
litigation."

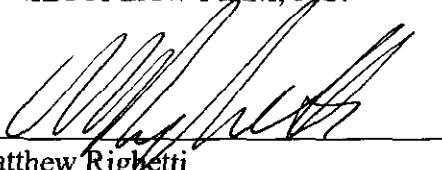
*Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.

12. This creditor is prepared to respond to any specific factual and/or legal arguments that pertain to a fair determination of this claim provided he is afforded the opportunity to conduct discovery so he can respond to any evidence submitted by the Debtors.

Respectfully submitted,

Dated: December 3, 2009

RIGHETTI LAW FIRM, P.C.

  
Matthew Righetti  
Attorney for Creditor, Jack Hernandez